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OCT 14 2008

**OFFICE OF PETITIONS**

In re Application of  
Erwin Bayer  
Application No. 10/568,394  
Filed:  
Attorney Docket No. 10537/319

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DECISION ON PETITION

This is a decision on the petition, filed January 7, 2008, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Notification of Missing Requirements of August 8, 2006, which set a two (2) month shortened statutory period for reply. Accordingly, a reply was due on or before October 10, 2006.

Petitioner states that a timely reply was mailed via by Express Mail on October 10, 2006, which includes the Declaration and Power of Attorney and the authorization to charge the \$130 Surcharge. Petitioner has submitted a copy of the previously mailed correspondence and the post card receipt which bears a received date stamp of October 10, 2006.

The file record does not include the originally submitted papers. Failure to receive correspondence is addressed in 37 CFR 1.8(b), reproduced below:


In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Notification of Missing Requirements of August 8, 2008 is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted.

This application is being referred to the Office of Patent Examination Processing

  
Irvin Dingle  
Petitions Examiner  
Office of Petitions